

Good afternoon mr/mrs chair and members of the committee. My name is Michael J. Fasbender, and I live at 3925 Deal Lane here in Helena. I thank you for your service to our state and for the opportunity to speak to you today.

I could spend hours telling you horror stories regarding my subdivision, but I know your time is valuable, so will try to give you the cliff notes version.

In early 2004 I made the naïve assumption that in order to do a subdivision, there was a list of rules that you had to follow, and if you followed those rules you would get preliminary plat approval. I submitted my application for subdivision on a piece of property here in L&C County, and promptly found out that there is a list of rules, but it changes almost daily.

As I said, I could talk for hours about the moving target that L&C County presented to me, but in the interest of time will try to focus on a couple of the more egregious ones that hopefully will help you to understand the need for this bill.

While my engineers said it was almost unheard of to get an approach permit to a state highway prior to preliminary plat approval, my partner and I wanted to try anyway. We wanted to get as many of our ducks in a row as we could before we submitted our application for subdivision. We had on site consultations with our traffic engineers and with officials from the Montana Department of Transportation. With their combined expertise we determined the best location for access to our project. MDOT issued an approach permit.

In our planner's staff report, which did recommend approval of the subdivision, she noted that due to traffic volumes and speeds the access may be dangerous. No evaluation of sight distances, road conditions, or any of the other tangible measurements engineers use in determining the viability of a highway access. Simply "might" be dangerous. I'm sorry, but if the standard of evaluation is "might" or "may", counties could arbitrarily deny any subdivision they wanted to.

We proceeded to the planning board. As a note, there were no engineers on the planning board. We made our presentation to the board, and after a few questions public comment was closed. One board member made a motion to recommend approval. In the discussion that ensued, a few members of the planning board said they had issues with our highway access location, because it was on a curve. One of the other members noted that it was a convex curve, not concave. This input was disregarded, and the PB proceeded to move our access to another location. Again, cliff notes, but the member who had made the motion to approve said he had changed his mind and was going to vote to deny. Motion to approve failed 5-1, and PB recommended denial.

It seemed that one of the main reasons for denial was the access location. So, with our engineers we went back to MDOT to see if they would approve our approach permit at the location the PB wanted. MDOT stated that while they thought the initially chosen access was the best location, the location recommended by the PB would also be an acceptable location for an access on their highway. I don't recall the exact distance, but MDOT stated that since the new location was within a few hundred yards of the initially permitted location, the existing permit would still apply and we didn't need to get a new one.

We provided this information to our planner, and proceeded with our date for our public hearing in front of the Board of County Commissioners.

This is where the shenanigans really started. L&C County employees started calling MDOT asking them to revoke our approach permit. I know a former MDOT employee who said he would testify to this, because he fielded many of the calls. Again, L&C County was not using any quantifiable data, traffic study, etc. to support their position. MDOT refused to revoke our permit.

Thus ends my testimony as to why you need to pass this bill so that counties will be required to base their decisions on substantial and credible evidence in approving or denying a subdivision.

And now, as Paul Harvey would say, the rest of the story.

We got to the Commission hearing, and were blindsided. As I said, there were some changes made to our proposal by the PB. We discussed these changes with our planner, engineers, MDOT, etc. and decided to go ahead and make the changes to appease the concerns of the PB. We didn't change number of lots, size of lots, etc. The only substantial change we made was the relocation of the access on the state highway. First words out of the commission chair's mouth were that it had come to his attention that changes had been made to the plat, and that the proposal needed to start over. The chair asked our planner if we had been informed of this, and she said yes. My partner and I were sitting in the commission chambers shaking our heads no. Chair suggested that we grab a conference room and have our option explained to us by our planner and the asst. county attorney. Ultimately we agreed to go back through the process.

Thus ends my testimony as to why minor changes should not trigger a whole new application process.

Now the rest of the rest of the story. I promise, I'm almost finished, and I thank you for your attention and your patience.

Our planner wrote a new staff report, and this time recommended denial. On Nov. 18th, 2004 our proposal was denied by the BOCC. Following the denial I stood in the hall and spoke with the commission chair, and asked him what we needed to do to move forward with our project. He said he would love to talk to us about it, and we scheduled a meeting to meet approx. 2 weeks from that date. 1 hour later I received a call from the Head Planner, and she told me that she had cancelled the meeting. I filed suit against L&C County in December, of 2004. Last month, after 4 years of legal battles, the BOCC voted to approve a settlement agreement with me, part of which gave me preliminary approval of my proposal. The worst part? The preliminary plat was almost identical to the first one we submitted in early 2004. Why should it take 4 years and tens of thousands of dollars in attorney's fees spent by myself and the taxpayers to get a subdivision approved?

MICHAEL J. FARBENDER
